IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1091 70-53

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant

v.

RAYMOND BELCHER

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BRIEF FOR UNITED MINE WORKERS OF AMERICA AS AMICUS CURIAE

EDWARD L. CAREY
HARRISON COMBS
900 Fifteenth Street, N.W.
Washington, D. C. 20005

M. E. BOIARSKY
512 Kanawha Valley Building
Charleston, W. Va. 25301

Counsel for United Mine Workers of America as Amicus Curiae

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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INTEREST OF UNITED MINE WORKERS OF AMERICA

This brief *amicus curiae* is filed by United Mine Workers of America (called "UMW") with consent of the parties, as provided in Rule 42 of this Court's Rules.

UMW is an international labor union representing about 225,000 members who, since the early 1940's, have produced from 75 to 82 per cent of the bituminous coal industry's total production.

Regarded as one of the nation's most hazardous employments, as recently as 1969 the frequency rate of disabling injuries per 1,000,000 man-hours for underground coal mining was 31.86 and 9.36 for surface mining

as compared with 8.08 for all industries.[1] UMW's workmen's compensation departments of its various districts throughout the United States in the period 1964 through 1967 handled 37,068 claims; and during 1968's first six months, 6,946 claims were handled.[2] The annual report of the West Virginia Workmen's Compensation Fund for the year ending June 30, 1970, records (pp. 15, 28) that the State's coal mining industry reported 15,022 accidents, which represented 41 accidents per million dollars in wages.

Traditionally, union members have looked to their labor union for help in problems associated with their working conditions. This Court's *Lewis* v. *Benedict Coal Corporation*, 361 U.S. 459, 468 records recognition of UMW's long struggle to provide security for its members and their families to enable them to meet problems arising from unemployment, illness, and old age and death. As a service agency,[3] UMW's interest in its members' welfare, singly and collectively, does not cease when a member becomes injured. Its activities include enforcement of workmen's compensation statutes. *UMW, District 12* v. *Illinois State Bar Assn.*, 389 U.S. 217. Hence, where, as herein, a federal district court[4] has held unconstitutional the federal statute reducing the social security benefits to which UMW's members are entitled by offsetting therefrom workmen's compensation awards, UMW's interest in seeking to uphold the district court's rejection of the statute is manifest.

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[1] "*Accident Facts*", 1970 Ed., published by National Safety Council, 425 N. Michigan Avenue, Chicago, Illinois 60611, p. 26.

[2] Joint Report of the International Officers, Constitutional Convention, 1968, p. 90.

[3] *Local 357, Teamsters* v. *NLRB*, 365 U.S. 667, 675-76.

[4] United States District Court for the Southern District of West Virginia (at Bluefield). Its opinion is reported as *Belcher* v. *Richardson, Secretary of Health, Education and Welfare*, DC, S.D. W. Va., 1970, 317 F.Supp. 1294.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE SOCIAL SECURITY STATUTE'S OFFSET PROVISIONS ARE UNCONSTITUTIONAL.

A. The District Court Properly Adopted This Court's Rationale of *Goldberg* v. *Kelly*.

Section 224 of the Social Security Act (Section 424a of Title 42, United States Code), together with the relevant Department of Health, Education and Welfare regulations, are set forth in the Appendix to Appellant's brief.

Thereunder, for any month in which an individual under 62 years of age is entitled to both social security benefits and periodic workmen's compensation benefits under any federal or state law, that individual's social security benefits are required to be reduced by the amount by which the total benefits received under social security and workmen's compensation programs for the month exceeds the higher of 80 per cent of the individual's average current earnings or the total of certain other designated disability benefits.

Because Appellee Belcher was receiving workmen's compensation benefits under West Virginia law, his disability benefits were reduced pursuant to Section 224.

The district court held that "in the circumstances of plaintiff's [Appellee's] case, the application of Section 224 cannot be constitutionally applied, since to do so would deprive him of due process and equal protection of the law under the Fifth and Fourteenth Amendments" to the Constitution of the United States (App. 13-14).[5]

[5]The abbreviation "App. ", followed by a page number, refers to the printed Appendix.

The district court's holding accorded with Appellee Belcher's contentions both in the district court proceedings (App. 3-4) and in Appellant's administrative proceedings (App. 20, 28-29, 39) as Appellee Belcher recites in his brief to be filed herein. UMW, as *amicus curiae*, endorses the district court's holding herein.

The district court regarded Appellee Belcher's claim that the statute's offset provisions deprived him of "property (benefits) without due process of law" to depend on whether he "has such an indefeasible right or interest in his social security benefits that the concept of due process precludes" their application (App. 11).

The district court recognized (App. 11) this Court's majority holding in *Flemming* v. *Nestor*, 363 U.S. 603 (1960), with then-Chief Justice Warren and Justices Black, Brennan and Douglas dissenting (363 U.S. 621-40), that old-age benefits of an alien, deported for cause under the Immigration and Nationality Act, could be lawfully terminated without offending the Fifth Amendment's due process clause. But, relying upon this Court's majority ruling in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), which was written by Justice Brennen—a dissenter in *Nestor*—and which, as the district court declared, "tends to elevate entitlement to welfare to the status of a property right and to surround it with all the safeguards required by due process" (App. 11), the district court concluded *Nestor "is no longer to be considered a viable and controlling precedent"* for the principle that "one who has contributed to the social security fund and later becomes eligible to receive the benefits provided by the Social Security Act has no indefeasible property right" thereto (App. 12). In so holding, the district court noted (App. 12) this Court's supporting language that *"It may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity'"* (397 U.S. 262, fn. 8). Additionally, *Goldberg declared*, "Much of the existing wealth in this country takes the form of rights which do not fall within traditional common-law concepts of property" and " '[s]ociety today is built around entitlement' " (397 U.S. 262, fn. 8).

Notably, Appellant's brief avoids and ignores these significant words.

Implementing *Goldberg's* rationale, the district court declared "it must be determined that one who has made direct contribution to the social security fund and becomes entitled to disability benefits thereunder should . . be accorded equal status and protection" (App. 12).

The district court reasoned logically it would be patently unfair for a welfare recipient under *Goldberg* to be accorded a "property right status" attended by due process safeguards, and yet to deprive a social security recipient of such status and protection under *Nestor* (App. 12). Appropriately, the district court declared the "distinction" is both "illogical" and "grossly inequitable" (App. 12).

The district court's holding, supported by *Goldberg*, is consistent with the dissent of Justice Black in *Nestor* in which he avowed that social security benefits are not gratuities but the "products of a contributory system . . from employees and employers alike", pointing to legislative history which recognized social security as an "*earned right*" (363 U.S. 631).[6]

Even prior to *Goldberg*, this Court had shifted from *Nestor*. *Shapiro* v. *Thompson*, 394 U.S. 618, 627, fn. 6, avowed "constitutional challenge cannot be answered by the argument that public assistance benefits are a 'privilege' and not a 'right' ", a thesis adopted by *Gold-*

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[6]Justice Black's dissent quotes a statement of Senator George, Chairman of the Senate Finance Committee, when the Social Security Act was passed. The quoted language appears in the district court's opinion (App. 12), a portion thereof being (363 U.S. 631-32):

"Social security is not a handout; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. *As an earned right, the individual is eligible to receive his benefit in dignity and self-respect.*"

berg (397 U.S. 254); and *Sherbert* v. *Verner*, 374 U.S. 398, 404, declared "It is too late in the day to doubt that" constitutional rights "may be infringed by the denial of or placing of conditions upon a benefit or privilege".[7] Adherence to *Goldberg* is noted in *Daniel, Director, etc.* v. *Goliday*, 398 U.S. 73 (1970) and *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970).

B. The District Court Correctly Held That The Involved Workmen's Compensation Benefits Must Be Treated As A Contractual Entitlement.

The West Virginia Workmen's Compensation Fund, as the district court correctly declared, though state-operated and to which employees make no direct monetary contributions, is sustained by contributions from employers voluntarily electing to come under the provisions of West Virginia Code, Chapter 23 (App. 10).[8]

The district court appropriately observed that under West Virginia authorities the workmen's compensation

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[7]In *Heikkila* v. *Celebrezze*, DC, N.D. Calif., 1963, 222 F.Supp. 629, where the wife of a deported alien was held entitled to social security benefits, *Nestor* was limited to its particular facts (pp. 631-32). In rejecting *Nestor's* thrust, the district court avowed it should not be extended "in creating an inequitable, unconscionable result as against an admittedly innocent citizen . ." and would "work a punishment and penalty upon the widow" (p. 631).

[8]Pertinent statutory provisions relating to the West Virginia Workmen's Compensation Fund appear in the Appendix to Appellee Belcher's brief filed herein. These include the following sections of West Virginia Code, Chapter 23, Article 2:

Section 1, dealing with "Employers and Employees, including State, Its Agencies and Political Subdivisions Subject to Chapter";

Section 6, dealing with "Exemption of Contributing Employers from liability";

Section 6-a, dealing with "Exemption from Liability of Officers, Managers, Agents, Representatives or Employees of Contributing Employers";

Section 7, dealing with "Notice to Employees; Waiver of Benefits of Chapter by Contract Prohibited";

Section 8, dealing with "Election Not to Pay or Default in Payment of Premiums; Defenses Prohibited"; and

Section 9, dealing with "Election of Employer to Provide Own System of Compensation".

statute became "an integral part of the contract" of employment and emphasized the contractual nature of a workmen's compensation award.* Accord: *Reliford* v. *Eastern Coal Corp.*, 6 Cir., 260 F.2d 447, which recognized that an industry-wide collective bargaining contract in the coal industry, requiring employee coverage under workmen's compensation statutes, accorded affected employees a *contractual right.*

It is thus evident the district court correctly declared Appellee Belcher's workmen's compensation benefits could not be termed a "gratuity" but "rather they must be treated as a *contractual entitlement*" (App. 10). Indeed, in *Truax-Traer Coal Co.* v. *Compensation Commissioner*, 123 W.Va. 621, 17 S.E. 2d 330 (1941), a workmen's compensation award was declared to be *"in the nature of a judgment" and therefore "property" and "as such is the proper subject of constitutional protection"* (p. 334).

C. The District Court Correctly Held That Section 224 Deprived Appellee Belcher of Due Process and Equal Protection of the Law Under the Federal Constitution.

The Fifth Amendment to the Constitution of the United States declares that no person shall "be deprived of . . . property, without due process of law". The same Constitution's Fourteenth Amendment bars any State from similarly depriving any person.

Though *Nestor's* majority based its opinion mainly on the theory there is no "accrued property right" to social security benefits, it conceded (363 U.S. 611):

> "This is not to say, however, that Congress may exercise its power . . free of all constitutional re-

*Gooding v. Ott, 77 W. Va 487, 87 S.E. 862; *Lancaster* v. *State Compensation Commissioner*, 125 W. Va. 190, 23 S.E. 2d 601; *Hardin* v. *Workmen's Compensation Appeal Board*, 118 W. Va. 198, 189 S.E. 670.

straint. The interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause."

Thus, *Nestor* admits Section 224 is not beyond the reach of the Fifth Amendment's due process requirements and that labeling benefits granted as a "privilege" and not a "vested right" in no way removes the social security system from requirements of fairness and rationality expressed in the due process clause and does not insulate the statute from judicial review for constitutionality. Further, that the Fifth Amendment incorporates the fundamentals of equal protection of law is established under *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954) and *Schneider* v. *Rusk*, 377 U.S. 163, 168 (1964), the latter avowing that "while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process' ".

This Court's *Sherbert* (374 U.S. 403) recognizes that only the gravest abuses, endangering paramount interests, give occasion for permissible limitation of constitutional rights and that no showing merely of a rational relationship to some colorable state or federal interest will suffice.

Congressional fiat required Appellee Belcher to make tax contributions to social security in years of covered employment which, in part, were placed in the Federal Disability Insurance Trust Fund which Congress created [42 USCA 401(b)].[10] Now suffering disability from a work-connected injury, Belcher became and is entitled to receive workmen's compensation benefits. Under Section 224, social security benefits to which

[10]The Act's Section 401(b) appears in the Appendix hereto, p. 1a.

he is admittedly entitled are reduced because of the receipt of workmen's compensation benefits. Still, another employee making the same social security tax contributions to the same Trust Fund and suffering a non-work-connected disability is permitted by Congress to receive from the Trust Fund full social security benefits.

The district court accepted Appellee Belcher's argument that Section 224's offset provisions created arbitrary discrimination between two classes of disabled workers, essentially indistinguishable from each other except one is composed of disabled persons receiving workmen's compensation benefits and other composed of disabled persons receiving benefits from private insurance plans or tort claim awards, so that on this sole difference benefits of the first class are reduced while those of the second class are left untouched (App. 13).

The district court also accepted Appellee Belcher's contention that the offset provisions discriminated between those disabled prior to June 1, 1965 and those disabled after that date (App. 13).

In rejecting Appellant's argument as to discrimination of the offset provisions on the ground that the purpose was to avoid duplication of public benefits, the district court declared "that no public funds are involved is made abundantly clear by" West Virginia Code, 23-3-1, which provides that the Workmen's Compensation Fund shall be supported by premiums and other funds paid thereto by employers, from which shall be paid all benefits due the employees or their dependents and expenses of administering the law (see Appendix B hereto, p. 3a) and that in West Virginia a workmen's compensation award is "an entitlement arising from a contractual relationship between employer and employee, sanctioned

by law, whereby each gave up a legal right in turn for a concomitant legal benefit" (App. 13).

Further, the district court expressed its awareness of "several unreported decisions of district courts and . . *Bartley* v. *Finch*, 311 F.Supp. 876 (E.D. Ky. 1970)" which supported Appellant's position that Section 224 may be constitutionally applied, but it rejected Appellant's invitation to accord "the issue raised in this case . . such cavalier treatment" because of *Goldberg* (App. 11).

Thus, in light of the district court's holding herein that a compensation award is a contractual entitlement and, as shown (*ante*, p. 7), is "property" to be constitutionally protected, Appellant's concession (Br. 16, fn. 14) that Congress has tried not to discourage *private insurance* and the Sixth Circuit's premise for validating Section 224 in *Lofty* v. *Richardson*, 6 Cir., No. 20484 (March 4, 1971) being "Private accident or disability insurance is a private contract" (Br. 16-17, fn. 14), emphasize the validity of the district court's holding herein, *Lofty's* error as it applies to the instant case, the inapplicability of Appellant's citation of *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (Br. 16), of *Katzenbach* v. *Morgan*, 384 U.S. 641, 657 (Br. 16) and of *Dandridge* v. *Williams*, 397 U.S. 471 (Br. 8, 9, 19) for the proposition that legislative reform is not invalid merely because it does not go far enough or is imperfect, as well as the inaccuracy of Appellant's questioning the district court's characterization of West Virginia workmen's compensation benefits as private in nature (Br. 17).

Additionally, the inappositeness of *Lee Optical*, *Dandridge* and *Katzenbach*, is found in *Shapiro* (394 U.S. 618) where this Court held that absent a compelling

governmental interest a federal statute violated the Fifth Amendment's due process clause by imposing a discrimination which impinged upon the constitutional right to travel; and in *Sherbert* (374 U.S. 398) wherein it rejected a state court's construction of an unemployment compensation statute concerning benefits because of the involvement of a First Amendment right.

Appellant argues that Section 224's offset provisions have a reasonable basis since its legislative history reveals Congressional purpose was to preserve the Social Security Disability Insurance system's basic purpose of rehabilitating the disabled worker and encouraging his return to productive work, and that Congress wanted to prevent the erosion or repeal of state workmen's compensation systems.[11] But, just as federal policy is concerned with rehabilitation and opposes malingering, West Virginia statutes too are attuned to each of these situations. Rehabilitation is provided for in West Virginia Code, Chapter 23, Article 4, Section 9; and provisions for modification of awards upon application *by both employees and employers* are found in Chapter 23, Article 5, Sections la through lc of the same Code.[12] Hence, the possibility that the combined payments would defer rehabilitation appears fanciful rather than real and provides no reasonable basis for Section 224's discrimination.

Appellant's brief carefully avoids any reference to this Court's statements in *Goldberg* (*ante*, p. 4). Instead,

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[11]Title 20, Code of Federal Regulations §404.1528, provides, in part:

"An individual for whom a period of disability has been established . . . shall if requested to do so, present himself for and submit to examination or tests . . and shall submit medical reports and other evidence necessary for the purpose of determining whether such individual continues to be under a disability."

[12]These statutory provisions appear in Appendix B hereto.

Appellant presses upon this Court the current viability of *Nestor* (Br. 18-19), despite this Court's negating the importance of distinguishing the right-privilege doctrine (*ante*, pp. 5-6).

Appellant attacks the district court's holding that "*Goldberg* had implicitly overruled *Nestor*" on the ground that "*Goldberg* dealt only with the *procedural* rights of a person whose benefits are terminated" and "has no bearing whatever upon the *substantive* validity of rational statutory limitations such as the qualification in Section 224" (Br. 18-19); but Appellant's attack must be tested in light of Appellant's disregard of *Goldberg's* language that "It may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity' " and of this Court's adherence to *Goldberg* in *Daniel, Director, etc.* v. *Goliday*, 398 U.S. 73 (1970) following the Seventh Circuit's holding in *Goliday* that "*if it is necessary to cast the matter of (the receipt of) public aid (governmentally provided) to the needy in one or the other of the long-labored-with molds of privileges or rights, we must classify it as a right and we do so.*" *Goliday* v. *Robinson*, DC, N.D. Ill., 1969, 305 F.Supp. 1224, 1226.

Where, as herein, workmen's compensation and only workmen's compensation is chosen (*ante*, p. 9) for curtailing social security benefits, the district court's holding that Section 224 "cannot be constitutionally applied" because it deprives the social security applicant of due process and equal protection of the law under the Federal Constitution should be upheld by this Court.

CONCLUSION

For the foregoing reasons, UMW urges that the opinion and judgment of the district court that the social security statute's offset provisions are unconstitutional are correct and should be affirmed.

Respectfully submitted,

EDWARD L. CAREY

HARRISON COMBS
900 Fifteenth Street, N.W.
Washington, D. C. 20005

M. E. BOIARSKY
512 Kanawha Valley Building
Charleston, W. Va. 25301

Counsel for United Mine Workers of America as Amicus Curiae

May, 1971

APPENDIX

APPENDIX A

42 USCA:

§401. Federal old-age and survivors insurance trust fund and Federal disability insurance trust fund.

* * * * *

(b) There is created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) (A) one-half of 1 per centum of the wages (as defined in section 3121 of Title 26, Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of Title 26, Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, and (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and so reported, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2) (A) three-eighths of 1 per centum of the amount of self-employment income (as defined in section 1402 of Title 26, Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of Title 26, Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, and (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns. As amended Dec. 30, 1969, Pub.L. 91-172, Title X, §1005, 83 Stat. 741.

* * * * *

APPENDIX B

West Virginia Code:

§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.

The commissioner shall establish a workmen's compensation fund from the premiums and other funds paid thereto by employers, as herein provided, for the benefit of employees of employers who have paid the premiums applicable to such employers and have otherwise complied fully with the provisions of section five [§23-2-5], article two of this chapter, and for the benefit, to the extent elsewhere in this chapter set out, of employees of employers who have elected, under section nine [§23-2-9], article two of this chapter, to make payments into the surplus fund hereinafter provided for, and for the benefit of the dependents of all such employees, and for the payment of the administration expenses of this chapter and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of such fund not in conflict with the provisions of this chapter.

* * * *

§23-4-9. Physical and vocational rehabilitation.

In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid pur-

poses, not, however, in any case, to exceed the sum of twelve hundred dollars. No payment, however, shall be made for such purposes as provided by this section unless authorized by the commissioner prior to the rendering of such treatment.

In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he is receiving any vocational rehabilitation or rehabilitative treatment that renders him totally disabled during the period thereof, be compensated on a temporary total disability basis for such period, unless he is being paid compensation under an award granted prior to the time such rehabilitation is authorized by the commissioner. (1923, c. 58, §38; 1929, c. 71, §38; 1935, c. 78; 1937, c. 104; 1949, c. 136; 1961, c. 160.)

§23-5-1a. Application by employee for further adjustment of claim—Objection to modification; hearing.

In any case where an injured employee makes application in writing for a further adjustment of his claim under the provisions of section sixteen, article four [§23-4-16] of this chapter, and such application discloses cause for a further adjustment thereof, the commissioner shall, after due notice to the employer, make such modifications or changes with respect to former findings or orders in such claim as may be justified, and any party dissatisfied with any such modification or change so made by the commissioner shall, upon proper and timely objection, be entitled to a hearing, as provided in section one [§23-5-1] of this article. (1939, c. 137.)

§23-5-1b. Same—Refusal to reopen claim; notice, appeal.

If, however, in any case in which application for further adjustment of a claim is filed under the next pre-

ceding section [§23-5-1a], it shall appear to the commissioner that such application fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not theretofore considered by the commissioner in his former findings, and which would entitle such claimant to greater benefits than he has already received, the commissioner shall, within sixty days from the receipt of such application, notify the claimant and the employer that such application fails to establish a prima facie cause for reopening the claim. Such notice shall be in writing and shall state the time allowed for appeal to the appeal board from such decision of the commissioner. The claimant may, within thirty days after receipt of such notice, apply to the appeal board for a review of such decision. (1939, c. 137.)

§23-5-1c. Application by employer for modification of award—Objection to modification; hearing.

In any case wherein an employer makes application in writing for a modification of any award previously made to an employee of said employer, and such application discloses cause for a further adjustment thereof, the commissioner shall, after due notice to the employee, make such modifications or changes with respect to former findings or orders in such form as may be justified, and any party dissatisfied with any such modification or change so made by the commissioner, shall upon proper and timely objection, be entitled to a hearing as provided in section one [§23-5-1] of this article. (1939, c. 137.)